

JUDGE SWAIN

13 CIV 5672

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BARCLAYS BANK PLC,

Plaintiff,

-against-

STANDARD CHARTERED
INTERNATIONAL (USA) LTD.,

Defendant.

COMPLAINT



Plaintiff Barclays Bank Plc ("Barclays") by its attorneys, Boies, Schiller & Flexner LLP, as and for its Complaint, alleges:

INTRODUCTION

1. This is an action seeking the return of a payment made by Barclays in 1990, on behalf of its client, through American Express Bank Ltd. ("AMEX Bank"), which was subsequently blocked by AMEX Bank in compliance with the U.S. Department of the Treasury's Office of Foreign Assets Control's ("OFAC") regulations in place at the time (the "Blocked Payment"). The Blocked Payment currently is held by, and is unjustly enriching, Defendant Standard Chartered International (USA) Ltd. ("SC") as successor in interest and name to AMEX Bank.

2. The payment was duplicated by Barclays shortly thereafter and routed via different banking channels to the satisfaction of its client. Barclays now respectfully requests that this Court 1) issue a declaration, pursuant to 28 U.S.C. § 2201, that Barclays holds exclusive

and lawful title to the Blocked Payment and 2) order SC to return the Blocked Payment to Barclays.

THE PARTIES

3. Plaintiff Barclays is an international bank incorporated in England and Wales, with its registered office in London, England.

4. Defendant SC is a successor in interest and name to AMEX Bank, and is a corporation organized under the laws of the State of Connecticut, with a principal place of business in New York, New York.

JURISDICTION

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(2) because the matter in controversy exceeds the sum or value of \$75,000 exclusive of interest or costs, and Plaintiff is a citizen or subject of a foreign state and Defendant is a citizen of a State.

6. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(a), (c) and (d).

GENERAL ALLEGATIONS

7. On June 16, 1989, a Libyan state-owned oil tanker called the M/V Al Wahda wrecked off the coast of Portugal. Though the vessel later refloated on May 9, 1990, it was towed to Lisbon and subsequently broken up. As a result of the accident, the vessel's owner, the Department of the General Secretariat of Marine Wealth for Libya (the "Insured"), filed a claim through an insurance broker, John Plumer & Partners Ltd. later renamed Arthur J. Gallagher Ltd. (the "Insurance Broker").

8. On August 10, 1990, Barclays received an instruction from its client, the Insurance Broker, to pay \$4,885,000.00 to the Libyan Arab Foreign Bank ("LAFB") in favor of

the Insured. LAFB was not one of Barclays' correspondent banks.

9. Barclays intended to make the payment via LAFB's dollar bankers, the Central Bank of Libya ("CBL"), for onward transmission to LAFB and therefore caused \$4,885,000.00 to be transferred to Barclays' correspondent bank in New York. [Exhibit A attached hereto and incorporated herein, is the instruction for the first payment].

10. However, the payment was routed via and blocked by AMEX Bank in New York, in compliance with OFAC regulations in place at the time, which required the blocking of payments to Libyan governmental entities. [Exhibit B attached hereto and incorporated herein, is a diagram outlining the routing of the Blocked Payment].

11. The Insurance Broker complained to Barclays that the payment had not been received by the Insured and that by routing the payment in the way it had done, Barclays was in breach of its mandate. In order to satisfy its client, Barclays caused a second, duplicative payment to be made to the Insured that was not routed via AMEX Bank and was not subsequently blocked.

12. When Barclays originally sought to recall the funds held by AMEX Bank, it was informed that payments out of CBL's account with SC were blocked by OFAC regulations. Therefore, at the time Barclays could not seek return of the first payment while sanctions against Libya were in place.

13. In the wake of the 2011 revolution in Libya, the OFAC regulations blocking payments out of CBL's accounts were lifted. However, Defendant SC, although holding no interest in the Blocked Payment, has refused Barclays' repeated requests to return the Blocked Payment to Barclays absent CBL's consent.

14. Barclays has attempted to make contact with the appropriate individuals within

the CBL, in order to obtain such consent. These attempts have in each instance proved unsuccessful.

15. Barclays has also attempted to locate documentary evidence of the second payment having been made and received, in order to demonstrate that the beneficiary received the funds, and as such cannot now rightly assert a claim to the Blocked Payment. Barclays has been able to identify in its own records the debit position in a suspense account showing that in an identical second payment Barclays' own funds were advanced in favor of the Insured. [Exhibit C attached hereto and incorporated herein, is a statement reflecting that the second payment was debited from a Barclays' account].

16. Additionally, Barclays has been able to procure two pieces of evidence that the second payment was received, comprising:

- Recent correspondence between in-house counsel for Barclays and the Insurance Broker, which indicates that the claim related to the Al Wahda wreck has been closed, which is the policy when a claim is satisfied. Moreover, the Insurance Broker has indicated no demand for payment was subsequently made, which was the standard practice for a claim left unsatisfied. [Exhibit D attached hereto and incorporated herein, is recent correspondence between in-house counsel for Barclays and the Insurance Broker].
- A swift message from LAFB confirming that it does not have an open enquiry from the Insured indicating that the sum of \$4,885,000 is outstanding from the Insurance Broker. [Exhibit E attached hereto and incorporated herein, indicates LAFB has no outstanding claim for the Blocked

Payment from the Insured].

17. This evidence demonstrates that no party other than Barclays may rightly make claim to title in the Blocked Payment and that the money held by Defendant SC should be returned to Barclays.

CLAIM I
(Unjust Enrichment)

18. Plaintiff repeats and realleges the allegations as set forth in paragraphs “1” through “17”.

19. Plaintiff caused to be made in 1990 a payment that was subsequently blocked due to OFAC regulations in existence at the time and held by Defendant SC to its benefit thereafter.

20. Plaintiff subsequently caused to be made a second, duplicate payment in the identical amount, which was successfully transferred in order to satisfy its client.

21. Since the Libyan revolution, the United States has removed the OFAC regulations against the Libyan government that caused the Blocked Payment to be held.

22. Defendant SC has no claim to the Blocked Payment, has been unjustly enriched by the Blocked Payment at the expense of Barclays, and in equity and in good conscience must return the monies held with interest to Barclays.

23. Barclays has requested return of the Blocked Payment and has been damaged and continues to be damaged by Defendant SC’s refusal to return the Blocked Payment.

CLAIM II
(Conversion)

24. Plaintiff repeats and realleges the allegations as set forth in paragraphs “1” through “23”.

25. Plaintiff caused to be made in 1990 a payment that was subsequently blocked due to OFAC regulations in existence at the time and held by Defendant SC to its benefit thereafter.

26. Plaintiff subsequently caused to be made a second, duplicate payment in the identical amount, which was successfully transferred in order to satisfy its client.

27. Since the Libyan revolution, the United States has removed the OFAC regulations against the Libyan government that caused the Blocked Payment to be held.

28. Barclays holds lawful title to and is entitled to possession of the Blocked Payment, and Defendant SC has acted without authorization in keeping the Blocked Payment in its possession.

29. Defendant SC has exercised dominion and/or rights of ownership over the Blocked Funds to the exclusion of Barclays’ rights, and has thereby converted the Blocked Payment.

30. Barclays has requested return of the Blocked Payment and has been damaged and continues to be damaged by Defendant SC’s refusal to return the Blocked Payment.

CLAIM III
(Money Had and Received)

31. Plaintiff repeats and realleges the allegations as set forth in paragraphs “1”

through “30”.

32. Plaintiff caused to be made in 1990 a payment that was subsequently blocked due to OFAC regulations in existence at the time and held by Defendant SC to its benefit thereafter.

33. Plaintiff subsequently caused to be made a second, duplicate payment for the same amount which was successfully transferred in order to satisfy its client.

34. Since the Libyan revolution, the United States has removed the OFAC regulations against the Libyan government that caused the Blocked Payment to be held.

35. Defendant is in receipt of the Blocked Payment, to which Barclays holds lawful title and is entitled to possess.

36. Defendant SC has no claim to the Blocked Payment and in equity and good conscience must return the monies held with interest to Barclays.

37. Barclays has requested return of the Blocked Payment and has been damaged and continues to be damaged by Defendant SC’s refusal to return the Blocked Payment.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court enter a declaratory judgment that Barclays holds exclusive and lawful title to the Blocked Payment and further enter judgment in its favor and against the Defendant, as follows:

1. That Defendant SC be ordered to cause the return to Barclays the full amount of the Blocked Payment by transferring to Barclays \$4,885,000.00 plus interest at the maximum rate permitted by law;

2. That Defendant SC be restrained by injunction from commencing or

prosecuting any action or proceeding against Barclays in relation to the return of the Blocked Payment;

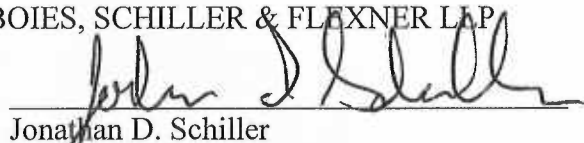
3. That Barclays be awarded its costs and attorneys' fees incurred in prosecuting this action; and

4. That Barclays have such other and further relief as the Court may deem just, proper and equitable.

August 13, 2013

Respectfully submitted,

BOIES, SCHILLER & FLEXNER LLP

A handwritten signature in dark ink, appearing to read 'Jonathan D. Schiller', is written over a horizontal line.

Jonathan D. Schiller

Joshua I. Schiller

575 Lexington Avenue

New York, NY 10022

Telephone: (212) 446-2300

Facsimile: (212) 446-2350

Attorneys for Barclays Bank Plc

EXHIBIT A

1
XXXX OUTGOING TELEX XXXXX
ZWLDTX WILD TELEX

892181 DIAL G
894031 BARINS G

18800 10-Aug-90 16:58

120283

PLEASE CLD U SND THE FOLLOWING TLX FOR US TO LIBYA ON THESE NUMBERS
090120661, 20659, 20747, 20796, 20388

TO CENTRAL BANK OF LIBYA
TRIPOLI
LIBYA

TESTED BETWEEN YOURSELVES AND OUR 168 FENCHURCH STREET OFFICE
TEST NO: ~~251120661~~

UNDER OUR REF: IETT 44831
PLEASE PAY: USD 4,885,000.00 (FOUR MILLION EIGHT HUNDRED
AND EIGHTY FIVE THOUSAND DOLLARS ONLY)

VALUE: 140890
BENEFICIARY: GENERAL SECRETARIATE OF MARINE WEALTH
BENEFICIARY ACCOUNT: 30102400004

BENEFICIARY BANKERS: LIBYAN ARAB FOREIGN BANK THATELMAD BUILDING
TRIPOLI

REMITTER: JOHN PLUMER AND PARTNERS LTD
PAYMENT DETAILS: SETTLEMENT M/V ALWAMDA ON BEHALF OF ISLAMIC
SOLIDARITY SHIPPING CO OF LIBYA

CHARGES: OUR ADVISE AND CREDIT
IN REIMBURSEMENT WE CREDIT AMERICAN EXPRESS BANK NEW YORK

REGARDS

BARCLAYS BANK PLC
122 LEADENHALL ST
LONDON
EC3
NNNN

894031 BARINS G
892181 DIAL G

08/16/90 10:25:43 *** MESSAGE DETAIL *** USER INV DP M
 LINK SWF LINE 1 SEQ 3250 BANK 1 DATE 08/10/90 TYPE T ST WRE /QUAL P
 LINK SEQ NUM 071770 OTHER SYS SEQ NUM BARCGB22A42182 CREATED FROM
 TEST SEQ NUM TEST DATE --- RELATED MESSAGES
 TEST AMOUNT TEST CURR ---
 TEST KEY TEST RESULT <--
 TEXT : 1054 10BARCUS33BXXX71770
) 1353 10BARCGB22AXXX42182
 202.02
 :20 TRANS REF NO :IETT44531222
 :21 RELATED REF :IETT44531222
 :32A VALUE :900814USD4885000.00
 :52D ORDERING BANK :BARCLAYS BANK PLC.
 LEADENHALL ST.
 :57D A/C WITH BANK :AMERICAN EXPRESS BANK NEW YORK
 XXX
 :58D BEN BANK :CENTRAL BANK OF LIBYA TRIPOLI
 XXX
 :72 BNK TO BNK INFO:BNF IN COVER OF TELEX PAYMENT
 DD 100890 .

-AUT/284A

MORE TEXT NO SCROLL(F/B/H/E/X/N/)/(S) X

ACTION

EXHIBIT B

Main Parties/Entities

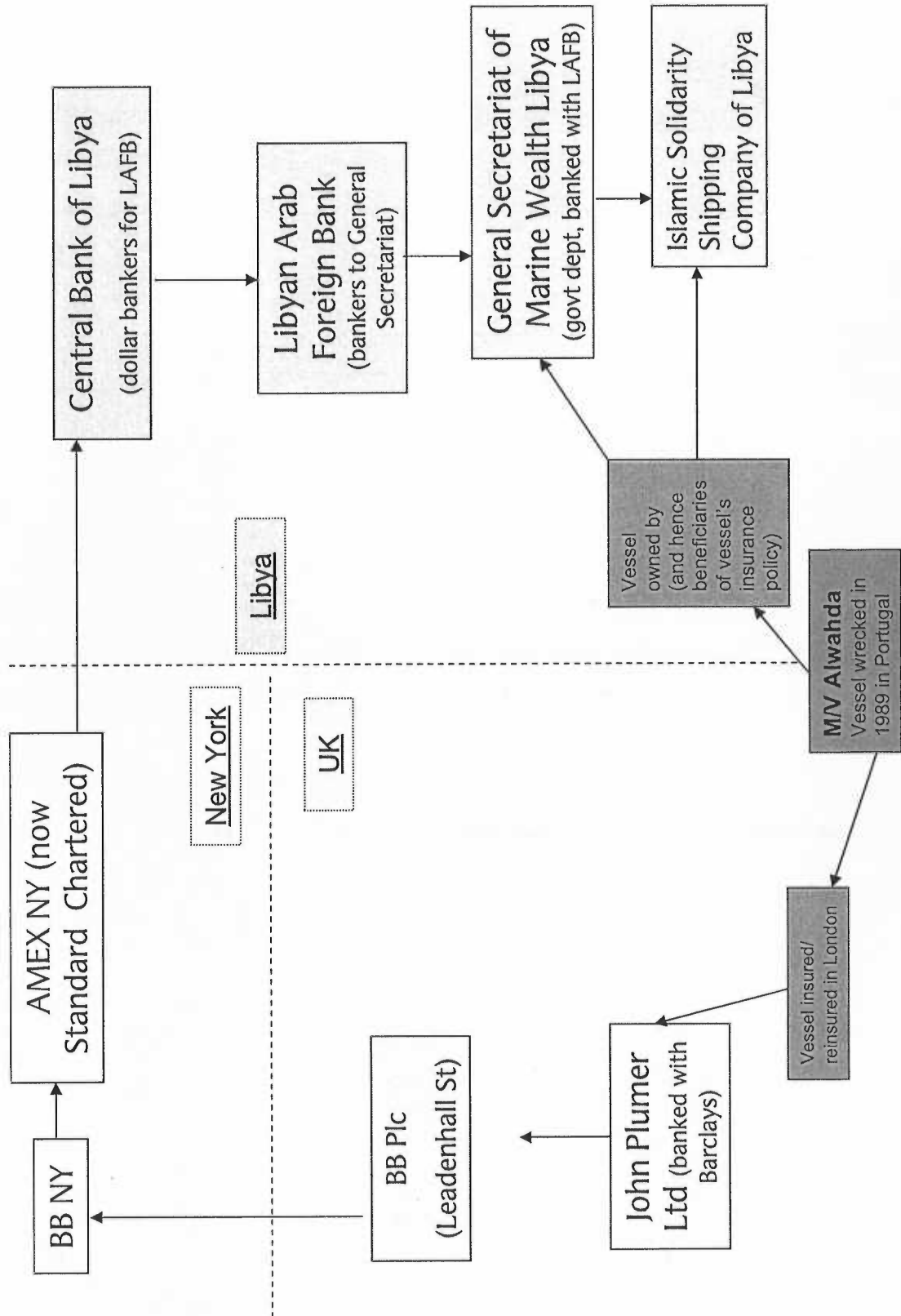


EXHIBIT C

Barclays Secure Browser

File Edit Windows Help Go

Screen 1 Account No. 66838977 12AUG10 17

ACCOUNT SUMMARY

A/C Type C CEC Product CC CAN BCA (NON-PERSONAL) Tax Status G

Currency USD Client BBARLON 1 CHURCHILL PLACE

A/C Name LIBYA BLOCKED FUNDS Short Name

Full Name FROZEN ADVANCE LIBYAN BLOCKED FUNDS

Notice 00 Interest Frequency 00000 Tax Exemption/Declaration ESD Tax Status

Dom Branch 200000 BARC.CHURCHILL PLACE CCY Branch 200000 BARC.CHURCHILL PLAC

CR Profiles: Branch Turn Type F Min Max

Rates : Fixed 0 66838977 LIBYA BLOCKED FUNDS

Interest Disposal A/C USD

DR Profiles: Branch Turn Type F Min Max

Rates : Fixed 0 66838977 LIBYA BLOCKED FUNDS

Interest Disposal A/C USD

Fiduciary Funds N Secured N CC Code GSCA

Rate Basis 360

Analysis Codes

Statement Frequency 1 N0000 2 DP Sheet Frequency N0000

FAC | DATA

Barclays Secure Browser

File Edit Windows Help Go

ACCOUNT ENQUIRY

Screen 2 Account No. 66838977 12AUG10 17

Currency USD Client BBARLON A/C Name LIBYA BLOCKED FUNDS

Show Daily Int Rate Change N Show Rate At Foot of Statement N

Rate Change Advice Required B Statement Media

Statement When Entry Applied D Stmt When Bal Breached N

Client Account Ref

Lien Expiry Date Limit Ccy USD

Overdraft Limit Expiry Date

Cheque Book Issued N Refer CR/DR N Cross Branch Entry Allowed Y

Date Account Opened 05/01/95 Date Account Last Amended

A/C Fee:Ind 4 Profile ISO001 A/C 66838977 LIBYA BLOCKED FUNDS

Waive All Fees For Period ? N

Additional Charge 0.00 Text

Account Inactive Y Inactive Date 06/01/97 EXT SYS Sort Code

Date Of Last Working Entry 050195 EXT SYS Ref No

PAC DATA

Barclays Secure Browser - [SOLD]

File Edit Windows Help Go

Customer Gateway «

Customer Gateway
Launch customer gateway

ACCOUNT ENQUIRY

Screen 5 Account No. 66838977 1

Currency USD Client BEARLOM 1 CHURCHILL PLACE Short Name
Name LIBYA BLOCKED FUNDS Tax Status G ESD Tax Sta
A/C Type C CFC Product CC CAN BCA (NON-PERSONAL)
Available Funds No Limit Set
Cleared Guide -4,885,000.00
Cleared For Int Balance -4,885,000.00
Ledger Balance -4,885,000.00
Limit Ccy USD O/D Limit
CR Accrued Int 0.00
Credit interest paid gross
Branch Turn Accrued : CR 0
Total Spend 0
Last Statement Date 24/06/10 Last Statement Balance -4,885,000.
CR Customer Rate FIXED 0
DR Accrued Int 0.00
DR -1,764.03
Max Daily Limit USD 0
DR Customer Rate FIXED 0

FAC DATA
482 THIS IS THE LAST PAGE

EXHIBIT D



Arthur J. Gallagher International

Gallagher London

Ms. Beth Silver
Legal Division
Barclays Capital
5 The North Colonnade
London
E14 4BB

16 February 2011

Dear Ms. Silver

John Plumer/ General Secretariat of Marine Wealth

Further to my letter dated 13 January 2011, I write with reference to your letter dated 22 December 2010. Please accept my apologies for the delayed response once again; my internal inquiries have taken sometime because of the historical nature of this matter.

Unfortunately, after much investigating, I have not been able to locate or access any records, files or documents relevant to the matter your letter raises. Therefore I am able to offer only limited assistance in response to your questions. The responses to your questions are given on the basis that I have been unable to locate any express information to the contrary:

1. We are unable to provide any records relating to your customer or in relation to any payments made following the wrecking of the M/V Alwahda in 1989.
2. We do not have any outstanding complaint or dispute either with the insured or generally relating to your customer in relation to an unpaid sum of \$4.855m.
3. We confirm that we do not have any pending item or liability in our accounts relating to the insured or the above mentioned sum.
4. We have not located any evidence of there having been a historical dispute with the insured regarding an unpaid sum of \$4.855m.
5. We can confirm that our file is closed on this matter in that we do not have any open or outstanding entries on our broker accounting system. It is our usual practice to consider a file closed once the time period in respect of which claims could be made under a particular policy has expired and there are no open claims on a particular policy year.



Arthur J. Gallagher International

Gallagher London

I am sorry that I cannot be of any more help, but I trust that the fact we have no open entries in relation to this insured is at least some use

Kind regards,

Yours sincerely

ALISSA PFITZNER
Chief Counsel & Company Secretary
For and on behalf of
ARTHUR J. GALLAGHER (UK) LIMITED

EXHIBIT E

Freeman, Beth : Legal

From: Hogg, Ian I : Business Banking
Sent: 15 September 2010 17:14
To: Lynn, George : Barclays Corporate
Cc: Nutt, Colin : Barclays Corporate; Hopper, John : Barclays Corporate; Freeman, Beth : Legal
Subject: RE: Commercial Payment USD 4.885.000 to General Secretariat of Marine Wealth
Importance: High

Hi George

A further message has been received.

{1:F01BARCGB22BXXX5997058752}{2:O1991316100915LAFBLYLTAXXX36309931591009151216N}
{3:{108:00837907}}{4:
:20:MR M TARHNI
:21:QMS100908-001434
:79:ATTN MR GEORGE LYNN, GLOBAL TRANSACTIONAL SALES,
FINANCIAL INSTITUTIONS.

LIBYAN ARAB FOREIGN BANK HAS BEEN ADVISED BY BARCLAYS BANK THAT BARCLAYS MADE A USD4.885.000 PAYMENT FOR ITS THEN CUSTOMER, JOHN PLUMER AND PARTNERS LIMITED (A.K.A. GALLAGHER PLUMER LIMITED) TO THE GENERAL SECRETARIAT OF MARINE WEALTH ON BEHALF OF ISLAMIC SOLIDARITY SHIPPING COMPANY OF LIBYA IN RELATION TO THE MERCHANT VESSEL ALWAHDA SHIPWRECKED ON 16/12/1989. UNFORTUNATELY, DUE TO THE PASSAGE OF TIME SINCE THIS PAYMENT WAS MADE, NEITHER BARCLAYS BANK NOR LIBYAN ARAB FOREIGN BANK ARE ABLE TO PRODUCE DOCUMENTARY RECORDS EVIDENCING THIS PAYMENT HOWEVER, LIBYAN FOREIGN BANK IS ABLE TO CONFIRM THAT AS OF THE DATE OF THIS SWIFT MESSAGE IT DOES NOT HAVE AN OPEN ENQUIRY FROM THE GENERAL SECRETARIAT OF MARINE WEALTH INDICATING THAT THE SUM OF USD4.885.000 ARE OUTSTANDING FROM JOHN PLUMER AND PARTNERS LIMITED OR ISLAMIC SOLIDARITY SHIPPING COMPANY OF LIBYA. WE CONFIRM THAT LIBYAN FOREIGN BANK CONSENTS TO BARCLAYS PRODUCING THIS MESSAGE TO ANY INTERESTED THIRD PARTY, AS NECESSARY, INCLUDING, BUT NOT LIMITED TO, THE CENTRAL BANK OF LIBYA AND STANDARD CHARTERED BANK NEW YORK IN ORDER TO RESOLVE THIS ISSUE.
REGARDS
M.TARHOUNI
MANAGER BANKING OPR. DEPT

Kind Regards